IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R.No. 311 of 2007
Date of decision : 19.1.2007

Hazara Singh & Ors.

.....Petitioners.

Versus

Nirmal Singh

.....Respondent.

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.Vivek Goel,Advocate
for the petitioners.

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VINOD K. SHARMA,J.(ORAL)

The petitioners by way of present revision petition have challenged the orders passed by the learned Courts below under Order 39 Rules 1 & 2 C.P.C. The learned Courts below have been pleased to partly allow the application by restraining the defendant from alienating the property. However, the other plea of the plaintiffs restraining them from raising construction or changing the nature of the property in dispute has been declined.

The learned counsel for the petitioners by placing reliance on the judgment of the Hon'ble Supreme Court in the case of ***Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass 2004(9) J.T. 216*** contended that the impugned order cannot be sustained as the petitioners could not be allowed to change the nature of the suit land. The petitioners-plaintiff by way of the present suit have challenged the sale deed executed by Gurdev Singh in favour of the defendant-respondent. It was claimed that now the defendant was threatening to alienate the suit land for which he has no right, title or interest and accordingly, it was prayed that the plaintiffs

were entitled to possession of suit land measuring 1K-10Ms.

The said suit was contested by the respondent-defendant on the plea that he was a co-sharer in the suit land and, therefore, the present suit was not maintainable as the remedy to the petitioners-plaintiff was to file the suit for partition. It was also claimed that a pucca boundary wall upto 5 feet has also been constructed in addition thereto a water pump has been installed after constructing a verandah. The learned Courts below found as a matter of fact that the respondent-defendant was in exclusive possession of the property and, therefore, he could not be restrained to its peaceful use. However, to protect the petitioners herein further alienation has been stayed.

The learned Courts below rightly observed that the claim of the plaintiffs was yet to be decided as to whether the sale deed in favour of the defendant-respondent was valid or forged one and, thus, it was rightly held that the petitioners had no prima facie case to seek injunction against the defendant-respondent restraining the peaceful use of the property. The learned Courts below rightly came to the conclusion that the judgment in the case ***Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass*** (supra) has no application to the facts of the present case.

There is no illegality or error in exercise of jurisdiction by the learned Courts below which may call for interference by this Court in exercise of revisional jurisdiction.

Dismissed.

19.1.2007 **(VINOD K. SHARMA)**
'sp' **JUDGE**